

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-110137
	:	TRIAL NO. B-0903962-B
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
JASHAWN CLARK,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist.Loc.R. 11.1.1.

Following a jury trial, defendant-appellant Jashawn Clark was convicted of three counts of felonious assault under R.C. 2903.11(A)(2), one count of improper discharge of a firearm into a habitation under R.C. 2923.161(A), two counts of having weapons while under a disability under R.C. 2923.13(A)(3), and two counts of aggravated murder under R.C. 2903.01(A). Several of these counts had accompanying firearm specifications. These convictions resulted from two separate shootings that occurred over a three-week period in March 2009.

The trial court sentenced Clark to two consecutive terms of life imprisonment without parole for the two aggravated murder convictions, which included a five-year prison sentence on a firearm specification. The court also sentenced him to an aggregate prison term of 11 years on the remaining counts and specifications.

Clark has a filed a timely appeal from these convictions. He was tried with two co-defendants, Eric Long and Fonta Whipple, whose convictions we affirmed in

State v. Long, 1st Dist. No. C-110160, 2012-Ohio-3052, and *State v. Whipple*, 1st Dist. No. C-110184, 2012-Ohio-2938.

Clark raises seven assignments of error for review. In his first assignment of error, he contends that the trial court erred by overruling his motion to sever the counts related to the two separate shootings for trial. He argues that he was prejudiced because the court permitted those counts to be tried together.

Our review of the record shows that Clark was not prejudiced by the court's failure to sever the counts related to each shooting because the evidence related to each shooting was simple and direct and the jury could easily segregate the proof for each offense. Therefore, the trial court did not abuse its discretion in overruling Clark's motion to sever. *See State v. Coley*, 93 Ohio St.3d 253, 259-261, 754 N.E.2d 1129 (2001); *Long* at ¶ 11-20; *Whipple* at ¶ 13-18. We overrule Clark's first assignment of error.

In his second assignment of error, Clark contends that the evidence was not sufficient to support his convictions. In his fourth assignment of error, he contends that the trial court erred in overruling his Crim.R. 29 motions for judgments of acquittal on all counts, which is a same as a claim that the evidence was insufficient to support the convictions. *See State v. Jones*, 1st Dist. No. C-080518, 2009-Ohio-4190, ¶ 41.

Our review of the record shows that a rational trier of fact, after viewing the evidence in a light most favorable to the prosecution, could have found that the state had proved beyond a reasonable doubt all the elements of felonious assault, having weapons while under a disability, improper discharge of a firearm into a habitation and aggravated murder. Therefore, the evidence was sufficient to support the convictions, and we overrule Clark's second and fourth assignments of error. *See*

State v. Jenks, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus; *Long*, 2012-Ohio-3052, at ¶ 48-49; *Whipple*, 2012-Ohio-2938, at ¶ 20-24.

In his third assignment of error, Clark contends that his convictions were against the manifest weight of the evidence. After reviewing the record, we cannot say that the jury lost its way and created such a manifest miscarriage of justice that we must reverse Clark's convictions and order a new trial. Therefore, the convictions are not against the manifest weight of the evidence. See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *Long* at ¶ 41-47; *Whipple* at ¶ 20-24. We overrule Clark's third assignment of error.

In his fifth assignment of error, Clark contends that the trial court erred in imposing excessive sentences. Our review of the record shows that the sentences were not contrary to law, or so arbitrary, unreasonable or unconscionable as to connote an abuse of discretion. Therefore, the trial court did not err in imposing them, and we overrule Clark's fifth assignment of error. See *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4192, 896 N.E.2d 124, ¶ 26; *State v. Clark*, 71 Ohio St.3d 466, 470, 644 N.E.2d 331 (1994); *Long* at ¶ 57-59.

In his sixth assignment of error, Clark contends that the trial court erred in failing to instruct the jury on the lesser-included offense of involuntary manslaughter and the offense of inferior degree of voluntary manslaughter. We agree that involuntary manslaughter under R.C. 2903.04(A) is a lesser-included offense of aggravated murder under R.C. 2903.01(A) and that voluntary manslaughter under R.C. 2903.03(A) is an offense of inferior degree. See *State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶ 129 and 132.

But the evidence, even when construed in Clark's favor, was not sufficient to allow a jury to reasonably reject the greater offense and find him guilty of a lesser-

included or inferior-degree offense. *See Id.* at ¶ 134. Nothing in the record supports the conclusion that Clark acted with any lesser level of intent than prior calculation and design or that he was under the influence of a sudden fit of passion or rage brought on by serious provocation by the victims. Therefore, the trial court did not err in failing to instruct the jury on involuntary manslaughter and voluntary manslaughter. *See Id.* at ¶ 129-137; *State v. Thomas*, 40 Ohio St.3d 213, 216-218, 533 N.E.2d 286 (1988); 216-218; *State v. Finley*, 1st Dist. No. C-061052, 2010-Ohio-5203, ¶ 30-31; *State v. Jackson*, 1st Dist. No. C-090414, 2010-Ohio-4312, ¶ 9. We overrule Clark's sixth assignment of error.

Finally, in his seventh assignment of error, Clark contends that the trial court erred by allowing the state to present "other acts" evidence. Specifically, he argues that the trial court should not have allowed a witness testify that he had seen Clark possess an assault rifle days before the first shooting. While evidence of other bad acts is generally inadmissible, Evid.R. 404(B) provides that it may be used to show motive, opportunity, intent preparation, plan, knowledge, identity or absence of mistake or accident. *State v. Lukacs*, 188 Ohio App.3d 597, 2010-Ohio-2364, 936 N.E.2d 506, ¶ 37 (1st Dist.).

In this case, the evidence was admissible to prove Clark's identity as one of the shooters. Further, the evidence described the immediate background of the charged crimes and was inextricably related to those crimes. Consequently, the trial court did not abuse its discretion in admitting the testimony into evidence. *See Long*, 2012-Ohio-3052, at ¶ 32; *Lukacs* at ¶ 37-39; *State v. Hirsch*, 129 Ohio App.3d 294, 308, 717 N.E.2d 789 (1st Dist.1998). We overrule Clark's seventh assignment of error and affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and DINKELACKER, JJ.

To the clerk:

Enter upon the journal of the court on July 25, 2012

per order of the court _____.

Presiding Judge

